

1 WILLIAM BRADSHAW  
2 D-73217 GW-325U  
3 P.O. Box 689  
Soledad, CA. 93960-0689

FILED

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In the matter of )  
WILLIAM BRADSHAW )  
On Habeas Corpus. )

Case No. C 08-1787 JF (PR)

TRAVERSE TO RESPONDENT'S RETURN TO ORDER TO SHOW  
CAUSE RE PETITION FOR WRIT OF HABEAS CORPUS

WILLIAM BRADSHAW  
Petitioner, In Pro Per

## TABLE OF AUTHORITIES

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2	Sass v. Cal. Brd of Prison Trms, 461 F.3d 1123, 1128 (9th Cir.2006)	3,4
3	Biggs v. Terhune, 334 F.3d 910, 914 (9th Cir. 2003)	3,4
4	McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002)	3,4
5	Sandin v. Conner, 515 U.S. 472 (1995)	3
6	Greenholtz v. Inmates of Neb. Penal & Corr. Comp., 442 U.S. 1, 7 (1972)	3
7	Board of Pardons v. Allen, 482 U.S. 369, 376-378	3
8	Superintendent v. Hill, 472 U.S. 445, 457 (1985)	4

## 10 CONSTITUTIONAL AUTHORITIES

11	Fourteenth Amendment to the United States Constitution	passim
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Soledad, CA. 93960-0689

4 Petition, In Pro Per

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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 WILLIAM BRADSHAW, ) Case No. C 08-1787 JF (PR)  
12 Petitioner, )  
13 vs. ) TRAVERSE TO ANSWER TO PETITION  
14 ) FOR WRIT OF HABEAS CORPUS  
15 B. CURRY, Warden, et al, ) Judge: Hon. JEREMY FOGEL  
16 Respondent. ) U.S. District Judge

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17

18 Petitioner, William Bradshaw, In Pro Per, respectfully submits the  
19 following traverse to the Respondent's Return in the above-entitled case.  
20 In support thereof, Petitioner admits, denies, and alleges as follows:

21 INTRODUCTION

22 The Respondent failed to set forth sufficient facts or law to show  
23 cause why the relief in the petition should not be granted.

24 Petitioner realleges all the allegations and contentions set forth  
25 in the original petition.

26 I.

27 Petitioner admits the portions in paragraph 1 regarding Petitioner's  
28 sentence and acknowledges that Petitioner is in the actual custody of

1 the California Department of Corrections and Rehabilitation (CDCR).  
2 Petitioner denies the remaining part of the allegation that he is currently  
3 "...in the lawful custody of the CDCR," for the reasons alleged in the  
4 original petition.

5 II.

6 Petitioner admits the allegation in paragraph 2 that he filed a  
7 petition for Writ of Habeas Corpus in Orange County Superior Court and  
8 that it was denied. Petitioner generally and specifically denies each  
9 and every remaining allegation in paragraph 2.

10 III.

11 Petitioner admits the allegations in paragraph 3.

12 IV.

13 Petitioner does not understand Respondent's contradictory position  
14 in paragraph 4. On one hand, Respondent admits Petitioner has exhausted  
15 his state court remedies regarding claims against his 2006 Board of Paroles  
16 hearing, then on the other hand states that he does not admit that the  
17 claims have been exhausted "to the extent they are more broadly interpreted  
18 to encompass any systematic issues beyond this claim," and therefore denies  
19 said allegation.

20 V.

21 Petitioner admits to the allegation of paragraph 5.

22 VI.

23 Petitioner denies Respondent's allegation in paragraph 6 claiming  
24 that Petitioner is not entitled to Federal Habeas relief. The state court  
25 denials of habeas relief were contrary to and involved an unreasonable  
26 application of, clearly established United States Supreme Court law, and  
27 those denials were based on an unreasonable interpretation of the evidence  
28 presented. This is the basic foundation of the original petition for habeas

1 corpus before this Honorable Court.

2                      VII.

3                      Petitioner denies the allegation in paragraph 7 that Petitioner does  
4 not have a federally protected liberty interest in parole under California  
5 Penal Code §3041. Contrary to Respondent's position, it has been made  
6 clear that California's parole scheme vests all prisoners whose sentence  
7 provides for the possibility of parole with a constitutionally protected  
8 liberty interest in the receipt of a parole release date, a liberty  
9 interest that is protected by the procedural safeguards of the Due Process  
10 Clause. (Irons v. Carey, (9th Cir. 2007) 479 F.3d 658, 662 (citing Sass  
11 v. California Board of Prison Terms, (9th Cir. 2006) 461 F.3d 1123, 1128;  
12 Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910, 914; and McQuillion v.  
13 Duncan, (9th Cir. 2002) 306 F.3d 895, 903). Respondent misapplies Sandin  
14 v. Conner, 515 U.S. 472 (1995), Mistates the rules of Greenholtz v. Inmates  
15 of Nebraska Penal and Corrections Complex, 442 U.S. 1, 7 (1972), and  
16 ignores Board of Pardons v. Allen, 482 U.S. 369, 376-378 (1987), the latter  
17 two of which both directly found a federal liberty interest in parole  
18 based on the identical type of language as is contained in California's  
19 parole statute, Penal Code §3041. Petitioner denies each and every  
20 remaining allegation in paragraph 7.

21                      VIII.

22                      Petitioner generally and specifically denies the allegations in  
23 paragraph 8. Under McQuillion I, Sass, Irons, and Biggs, Petitioner was  
24 entitled to more due process protections than alleged, and even if not,  
25 he denies that the Board gave him due consideration, or that its  
26 explanation was sufficient, for all the reasons stated in the original  
27 petition, herein, and in the accompanying points and authorities.  
28

## 1                   IX.

2                   Petitioner specifically denies Respondent's allegation in paragraph 9,  
 3 denying "that the some-evidence test is clearly established federal law  
 4 in the parole context." Petitioner alleges that the Supreme Court has set  
 5 a standard of review in Superintendent v. Hill, 472 U.S. 445, 457 (1985),  
 6 which provides the basis for the "some-evidence" standard. This  
 7 standard has been utilized by the Ninth Circuit in multiple published  
 8 opinions, making it clear that under principles of federal due process,  
 9 California inmates are entitled to a "some-evidence" review of their parole  
 10 hearing. (Sass v. California Board of Prison Terms, supra, 461 F.3d 1123  
 11 (9th Cir. 2006); Irons v. Carey, supra, 479 F.3d 658 (9th Cir. 2007); Biggs  
 12 v. Terhune, supra, 334 F.3d 914 (9th Cir. 2003); and McQuillion v. Duncan,  
 13 306 F.3d 895, 903 (9th Cir. 2002).) Petitioner also denies the allegation  
 14 in the second part of paragraph 9. Under Federal law, the United States  
 15 Supreme Court has clearly established that a parole board's decision  
 16 deprives a prisoner of due process if the board's decision is not supported  
 17 by "some evidence in the record", or is "otherwise arbitrary." (Irons v.  
 18 Carey, supra, 479 F.3d 658, 662 (9th Cir. 2007) [applying "some evidence"  
 19 standard used for disciplinary hearings as outlined in Superintendent v.  
 20 Hill, 472 U.S. 445-455 (1985)].) The evidence underlying the Board's  
 21 decision must also have "some indicia of reliability." (McQuillion v. Duncan,  
 22 306 F.3d 904; and Biggs v. Terhune, 334 F.3d 915).

## 23                   X.

24                   Petitioner generally and specifically denies the allegations in paragraph  
 25 10 and 11 for the reasons stated in allegation 9, in the original petition,  
 26 and in the accompanying points and authorities.

## 27                   XI.

28                   Petitioner denies the allegations in paragraph 12. Petitioner alleges

1 that an evidentiary hearing may be necessary to resolve the factual disputes  
2 and that the existing state court record is not sufficient and should be  
3 augmented<sup>1</sup>.

4 XII.

5 Petitioner denies the allegation in paragraph 13. This Honorable  
6 Court will assess what remedy Petitioner is entitled to, not the Respondent.  
7 Petitioner affirmatively alleges that the remedy ranges from ordering a  
8 new hearing under the guidance from this Honorable Court all the way to  
9 ordering the Petitioner released.

10 XIII.

11 Petitioner denies the allegations in paragraph 14. For the reasons  
12 set forth herein, in the accompanying Points and Authorities, and in the  
13 original petition, Petitioner has established his grounds for relief and  
14 shown that he meets both prongs of the AEDPA.

15 XIV.

16 Petitioner generally and specifically denies the allegations in  
17 paragraph 15.

18 XV.

19 Petitioner re-alleges each and every allegation and all of his claims  
20 as presented in his original petition, and the factual showing in his  
21 exhibits, and affirmatively alleges that Respondent, in his return, has  
22 done nothing more than restate the Board's decision via the Superior Court  
23 decision without offering any real explanation as to how or why the

24 \_\_\_\_\_  
25 <sup>1</sup> As part of an evidentiary hearing, this Court can order the Respondent  
26 to produce the decisions by the parole board during the 90 days before  
27 and after Petitioner's hearing. Petitioner anticipates that it will show  
28 that in 100% of all murder cases, the crime has been found to be "especially  
heinous, atrocious or cruel" at some point. Thus as applied would violate  
federal due process, in that it can fit any crime, and has lost the ability  
to distinguish crimes that truly are particularly egregious.

1 evidence supports a finding that Petitioner would currently pose an  
2 unreasonable risk of danger to the public if released. Respondent  
3 mischaracterizes and misconstrues Petitioner's arguments and theories,  
4 and the Court's attention is directed to the original petition and the  
5 accompanying points and authorities for a full understanding of the actual  
6 arguments relied upon herein. These documents provide the legal and factual  
7 basis for the claims raised herein.

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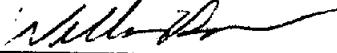
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1 PRAYER  
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Petitioner respectfully submits that the petition for writ of habeas corpus should be granted, and that he is entitled to the relief requested in the petition.

5  
6 Dated: 8-18-08

Respectfully submitted,

  
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8 WILLIAM BRADSHAW  
9 Petitioner, In Pro Per

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**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY  
(C.C.P. §§ 1013(A), 2015.5)**

I, WILLIAM BRADSHAW, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

WILLIAM BRADSHAW, CDCR #: D-73217  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: GW-325U  
SOLEDAD, CA 93960-0689.

On 8-18-08, I served the attached:

TRAVERSE TO ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS / MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TRAVERSE

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

AMANDA J. MURRAY  
DEPUTY ATTORNEY GENERAL  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA. 94102-7004  
(Attorney for Respondent)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 Golden Gate Ave.  
San Francisco, CA. 94102-9680

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Executed on 8-18-08.

  
WILLIAM M. BRADSHAW  
Declarant in Pro Per

WILLIAM M. BRADSHAW  
D-73217 GW-325U  
P.O. BOX 689  
SOLEDAD, CA. 93960-0689

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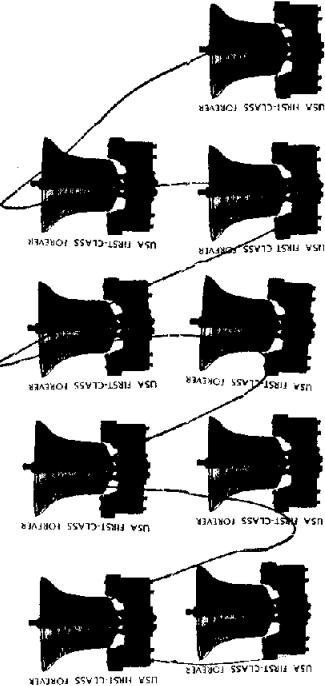
Aug 21 2008

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
COURT OF APPEAL FOR THE NINTH CIRCUIT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 Golden Gate Ave.  
San Francisco, CA. 94102-9680

LEGAL MAIL

LEGAL MAIL



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